



August 29, 2000

Ms. Katherine Cahill
Managing Counsel
San Antonio Water System
1001 East Market Street
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2000-3322

Dear Ms. Cahill:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 138536.

The San Antonio Water System ("SAWS") received a request for information relating to Basswood Group, L.P. ("Basswood") and its submissions to SAWS in response to an Invitation to Bidders. You state that you have released information responsive to categories one and three of the request. SAWS seeks our decision as to the information responsive to category two of the request, which you have provided for our review. You assert no exception to the release of this information, nor do you submit any arguments against its disclosure. However, you have notified Basswood of the request by a letter dated June 28, 2000, in compliance with section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Basswood responded to the notice and claims its information is excepted from public disclosure under sections 552.101, 552.104, 552.110, and 552.131 of the Government Code.

We begin by addressing Basswood's claim under section 552.104 of the Government Code. Under section 552.104, Basswood asserts that, "[r]eleasing Basswood's bid proposal prior to the awarding of the contract would give other bidders, including [the requestor], the unfair advantage in the bidding process of knowing the contents of an otherwise sealed bid." The purpose of section 552.104 is to protect the interests of a governmental body in competitive

bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. Consequently, as Basswood cannot avail itself of the protection of section 552.104 for its proposal, SAWS may not withhold any of Basswood's information under section 552.104 of the Government Code.

Basswood also argues that its trade secret and commercial or financial information is protected from disclosure under sections 552.110 and 552.131. Section 552.131, like section 552.110, applies to trade secrets or commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. However, unlike section 552.110, section 552.131 only applies to information that relates to economic development negotiations between a governmental body and a business prospect. Basswood has not established that the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body. See Gov't Code § 552.131. Accordingly, we find that section 552.131 is not applicable to Basswood's information in this instance.

Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. We first address Basswood's trade secret assertion. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); see also Open Records Decision No. 552 at 2 (1990). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ *Id.* This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). Blueprints, drawings, and customer lists are examples of information that may constitute trade secrets. See, e.g., *American Precision Vibrator Co. v. National Air Vibrator Co.*, 764 S.W.2d 274, 278 (Tex.App.--Houston [1st Dist.] 1988, no writ). Material which is essentially technical in nature and which relates to the substance of a proposal is ordinarily excepted as a trade secret. Open Records Decision

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS § 757 cmt. b (1939); see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Nos. 319 (1982), 296 (1981), 175 (1977). Information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing are not ordinarily excepted as trade secrets. Open Records Decision No. 319 (1982). After reviewing Basswood's arguments and the submitted information, we conclude that some of the information submitted constitutes protected trade secrets under section 552.110(a).

Basswood also asserts the applicability of section 552.110(b). The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999). After reviewing the information at issue and the arguments set forth by Basswood, we conclude that SAWS must withhold some of the submitted information under section 552.110(b).

However, we find that some of the information Basswood sets forth as protected by section 552.110 does not constitute either protected trade secret or commercial or financial information and must be released. The resumes listing only the education and experience of Basswood principals and employees cannot reasonably be said to fall within the "trade secret" or any other exception of the Act. Open Records Decision No. 175 (1977). Additionally, the first two pages of the proposal and the "Statement of Ability to Complete Project on Schedule" contain no information that is protected under either subsection of section 552.110. The section titled "Representative Project Experience" also cannot be withheld. *See* Open Records Decision No. 319 (1982) (information relating to professional references, qualification, and experience not excepted under section 552.110). As such, these pages of the proposal do not fall within the protection of section 552.110.

Finally, we note that none of the information that this decision finds is not protected under section 552.110 implicates the privacy interests of an individual so as to be excepted under section 552.101.

In summary, SAWS must release to the requestor the first two pages of the proposal, the section titled "Representative Project Experience," the resumes of the principals and employees, and the "Statement of Ability to Complete Project on Schedule." The remaining information is excepted from public disclosure under section 552.110.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by


filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 138536

Encl. Submitted documents

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